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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. 82 - 1081

Estate of William A. Frieders, Deceased,
Elmer Frieders, Executor, Petitioner

v.

Commissioner of Internal Revenue

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Contrary to the Commissioner's argument, this case is not "fact-bound". There is very little dispute as to the facts in this case. The erroneous evidentiary rulings of the Tax Court are the matters in issue.

The Tax Court's finding as to fair market value of the Frieders' family farm depends entirely upon incompetent

evidence. The decision of the Seventh Circuit Court of Appeals, in affirming the Tax Court, is in conflict with Illinois and federal decisions. The Respondent could not cite a single authority to support the decisions below. The Frieders' decision is a derelict on the sea of United States law that will create confusion for taxpayers faced with these valuation issues in the future.

1. The Respondent has attempted to finesse the Tax Court's error in relying upon the testimony of Mr. Neuses, the commissioner's appraiser. Five of the six sales relied upon as comparables by Mr. Neuses were sales to a single buyer putting together an assemblage near the Frieders' property.

The Respondent ignores the Illinois and Tax Court decisions that held that sales with a special value to the buyer, such as a key sale in an assemblage, are

not "comparable" sales and are not admissible as evidence of market value. (Henry Finck Co., 4 BTA 1188, (1926); Department of Transportation vs. Prombo, 63 Ill. App. 3d 407, 379 N.E.2d 953, (3d Dist. 1978); Trustees of Schools of TP., etc. vs. Chicago City B & T Co., 126 Ill. App. 2d 302, 262 N.E.2d 80 (1970).)

Respondent evasively labels this error as "a purely factual matter that goes to the weight and not the admissibility of the sales". (P.3) He sets forth no authority in support of this position. Examination of the cases cited by Petitioner reveals why - - such sales are inadmissible as a matter of law.

2. Respondent, likewise, evades the Tax Court's error in admitting assessment records as evidence of the property's fair market value. Petitioner cited five cases from the State of Illinois and the

Fourth Circuit Court of Appeals. County of Mercer v. Wolff, 237 Ill. 74, 86 N.E. 708, (1908), Lewis v. Englewood Elevated R.R. Co., 223 Ill. 223, 79 N.E. 44 (1906); City of Chicago v. Building Corp., 11 Ill. 2d 431, 143 N.E.2d 40 (1957); Dept. of Public Works v. Cohen, 9 Ill. App. 3d 85, 291 N.E.2d 883 (3d Dist. 1972). United States v. Certain Parcels of Land, 261 F. 2d 287, (4th Cir. 1958).

In his memorandum in opposition, the Respondent was again incapable of citing any authority to the contrary, nor was any attempt made to deal with the rationale of these cases. Instead, Respondent asserts that one of the five cases, Mercer County v. Wolff, 237 Ill. 74, 86 N.E. 708, (1908), is distinguishable. Despite this assertion, Mercer and the four other cases cited by Petitioner are crystal clear - - assessment records are

incompetent as evidence of a property's fair market value and are not admissible in evidence.

The petition for a writ of certiorari should be granted because the Seventh Circuit's decision, in affirming the Tax Court's errors, is in conflict with Illinois and federal decisions on the issues. Elmer Frieders should not be required to pay over $130,000.00 in additional taxes (appendix P. 60A) because of the valuation error by the Tax Court. The Frieders' decision is simply bad law on valuation evidence. The court should grant the petition for writ of certiorari to put an end to the conflict that has been created by the Frieders' decision.

Respectfully submitted,

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